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**SUPREME COURT, U. S.**

**In the Supreme Court**

**OF THE**  
**United States**

**OCTOBER TERM, 1953**

**No. 87**

**PUBLIC UTILITIES COMMISSION OF THE STATE  
OF CALIFORNIA; RICHARD E. MITTELSTAEDT,  
JUSTUS F. CRAEMER, et al.,**

*Appellants,*

**VS.**

**UNITED AIR LINES, INC., a Corporation, CATA-  
LINA AIR TRANSPORT, a Corporation, and  
CIVIL AERONAUTICS BOARD,**

*Appellees.*

**MOTION TO ALLOW AND TAX COSTS.**

**EVERETT C. McKEAGE,**

*Chief Counsel.*

**J. THOMASON PHELPS,**

*Senior Counsel.*

**WILSON E. CLINE,**

**MARY MORAN PAJALICH,**

*Associate Counsel,*

**514 State Building, San Francisco 2, California.**

*Counsel for Appellants.*

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**PUBLIC UTILITIES COMMISSION OF THE STATE  
OF CALIFORNIA; RICHARD E. MITTELSTAEDT,  
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*Appellants,*

**vs.**

**UNITED AIR LINES, INC., a Corporation, CATA-  
LINA AIR TRANSPORT, a Corporation, and  
CIVIL AERONAUTICS BOARD,**

*Appellees.*

**MOTION TO ALLOW AND TAX COSTS.**

Appellants respectfully move the above-entitled Court to allow and tax their entire costs on appeal against appellees United Air Lines, Inc., and Catalina Air Transport in the above-entitled proceeding, and allege as follows:

1. On the 25th day of June, 1952, United Air Lines, Inc., and Catalina Air Transport filed a complaint for declaratory relief and injunction against appellants above

named in the Southern Division of the United States District Court for the Northern District of California.

2. That thereafter Civil Aeronautics Board filed its appearance as intervenor.

3. On the 28th day of January, 1953, three-Judge Court for said Northern District entered its judgment in favor of plaintiffs (appellees), and against defendants (appellants).

4. On November 30, 1953, the above-entitled Court reversed said judgment rendered by said three-Judge Court.

5. That in reversing the decision of said three-Judge Court, the above-entitled Court made no order respecting the allowance of costs on appeal to appellants, and that there is no provision in the mandate from the Clerk of the above-entitled Court for the allowance of such costs.

6. That Rule 32(3) of the rules of the above-entitled Court provides:

"In cases of reversal of any judgment or decree by this court, costs shall be allowed to the appellant or petitioner, unless otherwise ordered by the court. The cost of the transcript of the record from the court below shall be a part of such costs, and be taxable in that court as costs in the case."

7. That in accordance with said rule and long established practice, appellants, as the prevailing parties, are entitled to recover their entire costs on appeal from appellees United Air Lines, Inc., and Catalina Air Transport, in the absence of any order of the above-entitled Court to the contrary.

8. That appellants do not seek to recover any costs from the United States or any officer or agency thereof, and that Rule 32(5) of the rules of the above-entitled Court is inapplicable herein.

9. That appellants' costs on appeal, which are but a fraction of the costs it has incurred by virtue of the complaint of United Air Lines, Inc., and Catalina Air Transport, are as follows:

Clerk	\$ 409.32
Cost of printing record	959.39
Cost of printing statement	226.94
	<hr/>
	\$1,595.65

WHEREFORE, appellants respectfully pray that the above-entitled Court make its order allowing appellants to recover the entire sum of \$1,595.65 as and for its costs on appeal of and from appellees United Air Lines, Inc., and Catalina Air Transport.

Dated, San Francisco, California,  
January 21, 1954.

Respectfully submitted,

EVERETT C. McKEAGE,  
Chief Counsel,

J. THOMASON PHELPS,  
Senior Counsel,

WILSON E. CLINE,

MARY MORAN PAJALICH,  
Associate Counsel,

*Counsel for Appellants.*



4

State of California,  
City and County of San Francisco—ss.

EVERETT C. McKEAGE, being first duly sworn, deposes and says:

That he is Chief Counsel of the Public Utilities Commission of the State of California, and as such makes this affidavit for and on behalf of appellants in the above-entitled action; that he has knowledge of the facts relative to the costs and disbursements itemized in the foregoing Motion to Allow and Tax Costs; that said items of costs and disbursements are correct, and that said costs were incurred and expended by appellants in said cause as therein stated.

EVERETT C. McKEAGE.

Subscribed and sworn to before me this 21st day of  
January, 1954.

(Seal)

R. J. PAJALICH,  
Secretary, Public Utilities Commission  
of the State of California.